

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District of Massachusetts
Name (under which you were convicted): JAY WOODWARD		Docket or Case No.: 98-10259-04 WGY
Place of Confinement: Federal Correctional Institution - El Reno		Prisoner No.: 8026-038
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) JAY WOODWARD

MOTION

- 05-11089 WGY**  
*Referred to MJ RB Collins*
- (a) Name and location of court that entered the judgment of conviction you are challenging:  
 UNITED STATES DISTRICT COURT ~~707 Post Office & Courthouse Bldg.~~  
 District of Massachusetts ~~99 Devonshire St., Room 707~~  
 One Courthouse Way Boston, MA 02108-4509  
 (b) Criminal docket or case number (if you know): \_\_\_\_\_
  - (a) Date of the judgment of conviction (if you know): January 1999  
 (b) Date of sentencing: 13 APRIL, AD1999
  - Length of sentence: 180 months
  - Nature of crime (all counts): Ct-1, "Bank Robbery"; Ct-2, "Use of Firearm during crime of violence"  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - (a) What was your plea? (Check one)  
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐  
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
- (b) Docket or case number (if you know): \_\_\_\_\_
- (c) Result: Appeal Denied/Conviction Affirmed
- (d) Date of result (if you know): July 25, 2000
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: 1) Split-ruling on Motion to Suppress Identification; and  
2) Challenge of Suggestive/Show-up Identification. The district court  
allowed the witness to testify to the merit of his observations, but did  
not allow the witness to identify the defendant (WOODWARD) in trial.  
(The First Circuit ruled that the prejudice was harmless error, due to  
the testimony of a co-defendant.)
- Counsel: Matthew Robinowitz
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
- If "Yes," answer the following:
- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: Denied/Conviction Affirmed
- (3) Date of result (if you know): December 11, 2000
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: Attorney: Matthew Robinowitz, handled the process, and  
I do not know the issues raised.
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?  
 Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information: N/A
- (a) (1) Name of court: \_\_\_\_\_
- (2) Docket or case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information: N/A

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO:** See attachment "II" made a part herein in the entirety by this reference.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Standards for raising this issue were not in my favor prior to recent Booker/Fanfan rulings by the Supreme Court

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

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**GROUND THREE:** N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? N/A

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? N/A

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_



Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



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(b) **Direct Appeal of Ground Four:** N/A

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application? N/A

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? YES.

If so, which ground or grounds have not been presented, and state your reasons for not presenting them: (1) & (2). Standards for raising these issues were not in my favor prior to recent Booker/Fanfan rulings by the Supreme Court.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Unknown to me

(b) At arraignment and plea: R.J. Cinguegrana

(c) At trial: R.J. Cinguegrana

(d) At sentencing: R.J. Cinguegrana

(e) On appeal: Matthew Robinowitz

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

At present the rulings in *Blakley v. Washington*, 124 S.Ct. 2531(2004) and subsequently in *United States v. Booker*, 543 U.S. \_\_\_\_ (2005) and in *United States v. Fanfan*, 543 U.S. \_\_\_\_ (2005) open a one-year window for petitioner's claims as set forth in this collateral assessment.

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Remand to the district court for resentencing, or i.a., remand for hearing in the district court and resentencing on the findings - or such further relief as the district court deems essential to the ends of justice, or any other relief to which movant may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on May 11, 2005 (month, date, year).

Executed (signed) on May 11, 2005 (date).

JAY WOODWARD

By: Jay Woodward

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. \_\_\_\_\_

#### IN FORMA PAUPERIS DECLARATION

\_\_\_\_\_  
[Insert appropriate court]

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ATTACHMENT "I":

Following Trial [December 1998 - January 1999] at sentencing before the Honorable William G. Young petitioner's protection of the 6th Article of Amendment (1791) right to jury finding beyond a reasonable doubt was violated in sentencing petitioner to an additional term of 18 - 20 months imprisonment for "injury to a victim" was not charged in indictment nor presented to the jury . This violation has prejudiced petitioner's liberty in violation of the Constitution and petitioner claims for correction and such remedy as is required in the interest of justice.

FACTS:

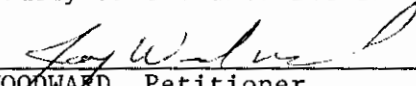
Facts other than those of prior conviction, and those presented to the jury were used at sentencing in this case on April 13, 1999, to adjust petitioner's sentence upward by two (2) points on the Base-Offense-Level of the United States Sentencing Guidelines (USSG) table, resulting in petitioner's sentence being enlarged by 18 to 20 months.

The court entered a claim of "injury to a victim" and increased petitioner's sentence as stipulated above without ever having presenting the claim to the jury at trial, without the jury ever finding guilt beyond a reasonable doubt, and without petitioner ever being allowed an opportunity to confront the claim against him. Thus, resulting in an illegal or unlawful sentence which has prejudiced petitioner's liberty by a sentence for imprisonment beyond that which the conviction on counts 1 and 2 of the indictment of 18 to 20 months additional prison term.

The charge, "injury to a victim" was never presented in indictment by the Grand Jury, and therefore the jury never was apprised of such charge. The jury cannot return a verdict beyond a reasonable doubt where not explicitly informed of the charge during trial.

The charge, and conviction of the court on a mere "preponderance of the evidence" of "injury to a victim" cannot stand the test of the 6th Article of Amendment, and as it prejudices petitioner's liberty, petitioner claims for correction of sentence and such further remedy as the district court deems essential to the ends of justice.

Date: May 11, 2005

  
JAY WOODWARD, Petitioner

ATTACHMENT "II":

**The sentence rendered on April 13, 1999, the result of the trial [December 1998 - January 1999] represents a violation of the Due Process clause of the 5th Article of Amendment (1791) which is now recognizable "stare decisis" as a recent Supreme Court decisions in U.S. v. Booker and Fanfan, as the sentence prejudices petitioner's liberty for an additional 18 - 20 months of imprisonment for a charge not convicted by the jury beyond a reasonable doubt, but rather rests merely upon the district court's charge and finding upon the preponderance of evidence**

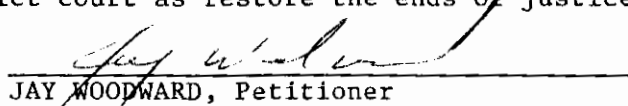
FACTS:

This jury trial and thus resulting sentence rests on a violation of the Due Process clause of the 5th Article of Amendment (1791) in that a jury (nor the court) can charge, and convict, then sentence upon any "elements/factors that are not explicitly cited in the indictment (information). In this case petitioner's liberty has been prejudiced by an additional 18 - 20 months term of imprisonment solely based upon the "preponderance of evidence" findings of the district court at the sentencing, where on April 13, 1999, the court claimed "injury to the victim" and then increased the Base-Level points by two (2) increasing the sentence of this petitioner by 18 to 20 months of imprisonment, all without meeting the required "beyond a reasonable doubt" findings of the jury (which jury had never been presented a charge of "injury to a victim" by indictment [nor information]) thus, breaching the Due Process clause protection and resulting in the petitioner suffering under the prejudice of an illegal or unlawful sentence.

Petitioner was never formally charged with "injury to a victim" (form of assault/felony claim), never "processed" before the grand nor trial jury, and thus never afforded due process as to the charge/question.

Therefore, petitioner claims for correction of the illegal or unlawful sentence, timely 28 U.S.C. §2255(3), Blakely, and Booker/Fanfan, and such further remedial findings of the district court as restore the ends of justice.

Date: May 11, 2005

  
JAY WOODWARD, Petitioner